

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2022

DOCKET NUMBER: AR20210015315

APPLICANT REQUESTS: in effect, the remission of the entire amount of his government debt.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Debt Records
- Defense and Finance Accounting Service (DFAS) letter to Senator, dated 9 June 2016
- Department of Treasury letter, dated 18 April 2018
- Letter from Applicant to the Department of Treasury, dated 29 June 2018
- Board of Education documents
- Notice of Refund Offset, dated 23 August 2018
- DFAS letter to Senator, dated 20 March 2020
- DFAS letter to Senator, undated
- Investigation findings regarding applicant for debt

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States Code (USC), section 1552 (b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He was an Army Reservist, who was activated three times for active duty. On his second deployment from October 2008 to January 2010, the Army overpaid him \$10,456.79, when he left active duty.

b. On his third deployment, which was cut short, the Army states that he was paid

\$29,618.33; however, he never received the funds. After the Department of Treasury added interest to his debt for collections, in the amount of \$7,288.39, his total debt rose to \$47,363.51.

c. He made payments to DFAS for the total amount of \$49,612.37, in which he overpaid in the amount of \$2,249.86, and never received reimbursement from DFAS.

d. He has been dealing with DFAS for the past several years; however, every time he contacted them, they would include new information and change the debt. He has spoken with countless of individuals at DFAS and has not received any resolution. He is now requesting that his total debt be forgiven, since he followed the rules. It was the Army who failure to follow proper procedures and the rules. In addition, he claims the amount of \$29,618.33 was never deposited in his account for his deployment, yet DFAS insisted that he was paid.

e. DFAS has made numerous mistakes, including later admitting that the applicant was never paid in the amount of \$29,618.33, and in Exhibit I and J, DFAS erroneous refers to someone by the name of Mr. M-, which is not the applicant.

3. The applicant provides the following documents:

a. Debt records, which reflects "present debt balance" as of 15 May 2011, that the applicant owed \$29,927.88 for Basic Pay (BP), Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS). His Lump Sum Leave (LSL) showed he had 3.5 days as of 27 January 2011.

b. DFAS letter to Senator, dated 9 June 2016, states:

(1) DFAS determined that the applicant's debt in the principal amount of \$29,527.97 remains valid. They added interest, penalty charges, and administrative fees, totaling \$1,127.96. They applied a payment of \$156.00 bringing his balance to \$30,509.93. His current debt is at a private collection agency, in which they may add additional fees, in accordance with their contract with the Department of Treasury.

(2) Although the applicant states he never received any money for the time he served in the U.S. Army Reserve (USAR), according to his master pay file, he received a net amount of \$11,121,54 on 15 February 2011.

(3) His prior debt of \$10,378.00, included an advanced payment of \$1,200.00, which he received on 13 December 2010. He also received two casual partial payments in the amounts of \$6,452.00 and \$2,726.00, which he also received on 27 December 2010 and on 18 January 2011.

c. Department of Treasury letters, dated 27 July 2017 and 18 April 2018, shows that the applicant was notified that the Internal Revenue Service applied all or part of his payment to his delinquent debt, in the amounts of \$599.21 and for \$1,582.00.

d. Letter from applicant to the Department of Treasury, dated 29 June 2018, states, that he was submitting a Consumer Debtor Financial Statement, his last two bank statements, and his 2017 tax returns. He recently refinanced his home and received a check in the amount of \$24,782.00, in which he would like to settle his obligation to end all further debt and garnishments. He provides a letter, dated 9 August 2018, which states he is enclosing a check for \$24,782.00 as agreed upon with the Department of Treasury.

e. He provides, in what appears to be documentation from the Board of Education that lists his salary and income with deductions for the period of 5 August 2016 to 15 August 2018.

f. Notice of Refund Offset from the Oregon, Department of Revenue Office offset his debt to DFAS from his State tax refund, dated 23 August 2018, in the amount of \$3,189.86.

g. DFAS letter to Senator, dated 20 March 2020, states, in pertinent part, that the applicant was previously advised that his debt of \$10,456.79 was because of an overpayment of pay and allowances from 27 January 2011 to 15 May 2011. The debt is correct, but the debt reason was not. His debt was due to an overpayment of pay and allowances upon his date of separation, in which he received mid-month payments that he was not entitled to, and for 9 days of LSL, which he was also not entitled to. He also received additional debt totaling \$32,548.03 for various pay he was not authorized; although as of 19 April 2019, the applicant's debt is paid in full, DFAS, according to regulation, was required to report his debt to the credit reporting agencies. In addition, DFAS states that the applicant has not provided them with any documentation to show he over-paid and is entitled to a reimbursement of any funds.

h. DFAS letter to Senator, undated, states in effect, that although the applicant is correct in that he never received funds into his account, this was because the payment of \$11,121.54 was applied toward a previous debt on 15 February 2011, which was used to offset his indebtedness. In addition, they are unable to remove interest, penalty and administrative fees.

i. Investigation findings regarding the applicant's debt, states, "Review of the facts surrounding the case shows that appropriate collection actions and fee accruals were taken in accordance with the Debt Collection on Improvement Act of 1996. It is determined that [applicant] was provided more than the allowable time to

make arrangements to repay the debt.” (Note: this document erroneously used the name Mr. M-, which appears to be an administrative error).

4. The applicant’s service record shows the following documentation:

a. DD Forms 214 (Certificate of Release or Discharge from Active Duty) for the following periods, shows he served in the USAR and was honorably released from active duty on:

- (1) 6 January 1987 to 15 September 1990
- (2) 8 May 2006 to 26 August 2007
- (3) 30 October 2008 to 3 January 2010
- (4) 29 November 2010 to 26 January 2011

b. Orders C-02-302893, issued by U.S. Army Human Resources Command (HRC), dated 19 February 2013, shows he was reassigned in the U.S. Army Reserve from the USAR Control Group (Reinforcements) to the Retired Reserve, with an effective date of 1 July 2013.

c. Orders C04-192709, issued by HRC, dated 22 April 2021, shows he was placed on the retired list, effective 7 November 2021.

d. DA Form 5016 (Chronological Statement of Retirement Points), prepared on 17 June 2022, shows he completed 25 years, 1 month, and 9 days of qualifying periods for retirement, with service in the USAR, Regular Army, and the Army National Guard.

e. His record does not reveal any documents regarding his overpayment, debt, or payment of BP, BAH, BAS, or payment of a LSL.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant’s request, supporting documents, evidence in the records, and applicable regulatory guidance. The Board noted that the applicant incurred a debt as a result of an overpayment of pay and allowances upon his date of separation, and various pay he was not authorized. According to DFAS and the applicant, the debt is paid in full. Although he contends that he over-paid his debt, he has not provided DFAS with documentation to show he over-paid and is entitled to a reimbursement of any funds. Since the debt was a valid debt and is paid in full, and since there is no evidence of any overpayment, the Board determined relief is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

█ █ █ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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X Donna Bush

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 600-4 provides instructions for submitting and processing applications for remission or cancellation of indebtedness to the U.S. Army. Applications must be based on injustice, hardship, or both. The regulation states that a Soldier's debts to the U.S. Army may be remitted or canceled in cases arising from payments made in error to a Soldier, payments made in excess of an allowance on behalf of a Soldier, debts incurred while serving on active duty as a Soldier, and debts acknowledged as valid.

3. Army Regulation 37-104-4 (Military Pay and Allowances Policy) provides Department of the Army policies for entitlements and collections of pay and allowances for active duty Soldiers. It is used in conjunction with Department of Defense Financial Management Regulation, Volume 7, Part A, Department of Defense 7000.14-R.

a. Paragraph 28-2 states that if the Secretary of Defense or any designee determines that a Soldier is indebted to the U.S. Government as a result of an erroneous payment made to or on behalf of the Soldier by an agency of the U.S. Government, that debt may be collected.

b. Paragraph 32-4 of the same regulation states that a debt may not be waived merely because it resulted from administrative error. It further states that no one is entitled to unearned compensation, and only in very unusual circumstances would equity and good conscience suggest that an individual should keep an overpayment.

//NOTHING FOLLOWS//